



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2013-0334]

RIN 1625-AA00

Safety Zone; Safety precautions to protect the public from the effects of a potential catastrophic failure of the Marseilles Dam; Illinois River.

AGENCY: Coast Guard, DHS.

ACTION: Temporary Final Rule.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the Illinois River from Mile Marker 231.0 to Mile Marker 271.4. This zone is intended to place restrictions on vessels due to the salvage and port recovery operations in this part of the Illinois River, and the potential structural concerns regarding the Marseilles Dam. This safety zone is necessary to protect the general public, vessels, and tows from the hazards associated with salvage and port recovery operations and the potential catastrophic failure of the Marseilles Dam.

DATES: This rule will be enforced with actual notice from April 29, 2013, until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. This rule is effective in the Code of Federal Regulations from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until June 30, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2013-0334]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, contact MST1 Joseph McCollum, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747-7148 or by email at [Joseph.P.McCollum@USCG.mil](mailto:Joseph.P.McCollum@USCG.mil). If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking
TFR	Temporary Final Rule

A. Regulatory History and Information

On April 18, 2013, in light of dangerously high water conditions, the Coast Guard established a temporary safety zone on the Illinois River from Mile Marker 187.2 to Mile Marker 285.9 (see docket for this regulation). The safety zone restricted recreational and commercial vessel transits in the zone without the permission of the Captain of the Port Lake Michigan. That safety zone has been effective and enforced since April 18, 2013, and expires on April 30, 2013. Because of the emergent nature of the flooding, the Coast Guard did not solicit comments before establishing this temporary safety zone.

On April 29, 2013, in order to facilitate commerce and in consideration of salvage operations around the Marseilles Dam, the Coast Guard established a temporary safety zone (USCG-2013-0323) that authorized commercial vessels to transit the Illinois River except from Mile Marker 244 to Mile Marker 252. Recreational vessels were prohibited from Mile Marker 187.2 to 285.9. Because of the

emergent nature of the flooding, the Coast Guard also did not solicit comments prior to establishing this temporary safety zone.

Now, the Coast Guard is issuing a third temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The Coast Guard is issuing this rule in response to an immediate and emergency situation which involves salvage and port recovery operations in the vicinity of the Marseilles Lock and Dam and the potential for catastrophic failure of the Marseilles Dam. Thus, delaying the effective date of this rule to wait for a comment period to run would be impracticable because it would inhibit the Coast Guard's ability to protect persons and vessels from the hazards, which are discussed further below, associated with the potential catastrophic failure

of the Marseilles Dam.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. For the same reasons discussed in the preceding paragraph, waiting for 30 day notice period to run would be impracticable and contrary to the public interest.

B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and limited access areas: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

Heavy and extended periods of rain during the first half of the month of April resulted in dangerously high waters within the Illinois River, bringing excessive debris, rapidly-flowing water, and complicating vessel navigation. These high and rapidly-moving waters also threatened to damage critical infrastructure including river levees.

As a result of these conditions, the Coast Guard established the two previously-mentioned safety zones on the Illinois River from Mile Marker 187.2 to Mile Marker

285.9. Since April 18, 2013, seven barges broke loose from their tow during an approach to the Marseilles Lock canal and lodged against the Marseilles Dam. Salvage operations are underway to recover the barges and a structural survey of the dam is being conducted.

On April 29, 2013, the U.S. Army Corps of Engineers released Navigation Notice IW 13-12 saying that Dresden Lock and Starved Rock Lock will not lock vessel traffic into the area between the locks with the exception of those vessels assisting in the salvage operation or the dam recovery efforts at Marseilles Dam. Currently, both commercial and recreational vessels remain within portions of the Illinois River, which could either be affected by the failure of the Marseilles Dam or could impede the salvage operations at work there. This affected area is determined to be all waters of the Illinois River between the Starved Rock Lock and Dam (Mile marker 231.0) and the Dresden Lock and Dam (Mile Marker 271.4).

In an effort to ensure the safety of all vessels that might be either affected by the failure of the Marseilles Dam or could impede the salvage operations being conducted, the Captain of the Port is issuing this temporary final rule. Enforcement of the restrictions in the prior temporary safety zone (USCG-2013-0323) will be suspended.

The Captain of the Port, Lake Michigan, has established the restrictions named within this regulation in response to the safety risks presented by the high water conditions, the potentially compromised dam, and ongoing salvage operations. The safety risks associated with these conditions include loss of vessel control, sinking, swamping, collisions, and allisions.

#### C. Discussion of Rule

The Captain of the Port, Lake Michigan, has determined that a safety zone is necessary to mitigate the aforementioned safety risks. This rule establishes a safety zone that encompasses all waters of the Illinois River from the gates of the Dresden Lock and Dam at Mile Marker 271.4 to the gates of the Starved Rock Lock and Dam at Mile Marker 231.0. This rule will place restrictions on certain vessels entering, transiting, moving within, or departing the waters within the safety zone. Inbound vessels are directed to contact the Army Corps of Engineers; vessels transiting within or departing from this zone are directed to contact the Captain of the Port, Lake Michigan Representative. This rule is effective and will be enforced from April 29, 2013, until June 30, 2013.

The Captain of the Port Lake Michigan will notify the public that this safety zone is being enforced by all

appropriate means to the affected segments of the public including publication in the Federal Register as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include, but are not limited to Broadcast Notice to Mariners or Local Notice to Mariners.

All persons and vessels shall comply with the instructions of the Captain of the Port, Lake Michigan, or his or her designated on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Lake Michigan, or his or her designated on-scene representative. The Captain of the Port, Lake Michigan, or his or her designated on-scene representative may be contacted via VHF Channel 16 or by contacting the Coast Guard Sector Lake Michigan Command Center at (414) 747-7182.

#### E. Regulatory Analysis

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

##### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under



section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for a relatively short amount of time. Also, this safety zone is designed to minimize its impact on navigable waters. Furthermore, the safety zone has been designed to allow vessels to transit unrestricted to portions of the waterways not affected by the safety zones. Thus, restrictions on vessel movements within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the

Captain of the Port, Lake Michigan. On the whole, the Coast Guard expects insignificant adverse impact to mariners from the activation of this safety zone.

## 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit portions of the Illinois River during the time that this zone is enforced.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: this safety zone would be effective and thus subject to enforcement, for two months. Traffic may be allowed to pass through the zone with the permission of

the Captain of the Port. The Captain of the Port can be reached via VHF channel 16. Before the enforcement of the zone, we would issue local Broadcast Notice to Mariners.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule so they can better evaluate its effects on them. If this rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

#### 6. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 7. Taking of Private Property

This rule will not affect the taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 8. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 9. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### 10. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian

tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### 11. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

#### 12. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 13. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone, and thus, paragraph 34(g) of figure 2-1 in Commandant Instruction M16475.1D applies.

An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are

available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T09-0334 to read as follows:

§ 165.T09-0334 Safety Zone; Safety precautions to protect the public from the effects of a potential catastrophic failure of the Marseilles Dam; Illinois River.

(a) Location. All waters of the Illinois River from the gates of the Dresden Lock and Dam at Mile Marker 271.4 to the gates of the Starved Rock Lock and Dam at Mile Marker 231.0.

(b) Effective and Enforcement Period. This safety zone will be effective and enforced from April 29, 2013,

until June 30, 2013.

(c) Regulations. (1) All vessels permitted to enter or remain in the safety zone are prohibited from laying up on levees.

(2) All vessels are prohibited from entering, transiting, or anchoring within this safety zone unless authorized by the Captain of the Port, Lake Michigan, or his designated representative.

(3) Any vessel located within the safety zone will be authorized to transit within or exit the safety zone only by permission of the Captain of the Port, Lake Michigan or his designated representative.

(d) Exceptions. (1) All vessels intending to transit into the safety zone are authorized to do so at the discretion of the Dresden and Starved Rock Lockmasters. The Dresden Lockmaster may be contacted by calling 815-942-0840. The Starved Rock Lockmaster may be contacted by calling 815-667-4114. Vessels underway in the Dresden or Starved Rock Pool should immediately seek a safe mooring or departure from the affected pools. Vessels moored within the Starved Rock or Dresden Pool that intend to depart or transit within the pool shall contact The Captain of the



Port, Lake Michigan or his on-scene representative via VHF Channel 16, or by calling (630) 336-0300. Vessel operators given permission to enter, operate, or depart from the safety zone must comply with all directions given to them by the Captain of the Port, Lake Michigan, or his on-scene representative. The "on-scene representative" of the Captain of the Port, Lake Michigan is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Lake Michigan to act on his behalf.

DATED: April 29, 2013

M.W. SIBLEY  
Captain, U.S. Coast Guard  
Captain of the Port, Lake Michigan

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